

FAIR HOUSING SALES TESTING REPORT

Fairfax County Human Rights Commission
Fairfax, Virginia

April 2002



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FAIR HOUSING TASK FORCE OF THE HUMAN RIGHTS COMMISSION OF FAIRFAX COUNTY

Provided input into the development of the Fairfax County Fair Housing Testing Program, the Fair Housing Plan, and the Analysis of Impediments.

NORTHERN VIRGINIA REGIONAL COMMISSION (NVRC)

Coordinated and solicited requests for proposals, negotiated contracts with the testing vendors, and coordinated these efforts with all other Northern Virginia jurisdictions.

THE ARAB AMERICAN INSTITUTE

Supported the Fair Housing Testing Program by identifying and referring individuals to serve as testers.

THE FAIR HOUSING TESTERS

Whose interest, professionalism, and dedication to the mission of Fair Housing is greatly appreciated. Without such a group of committed individuals the Fairfax County Human Rights Commission could not have conducted such an effective testing program.

FAIR HOUSING MANAGEMENT CONSULTANTS

Was selected as the consulting firm to assist with the development of the Fairfax County Fair Housing Sales Testing Project. Its professional and administrative staff provided materials, training, and debriefing of testers; scheduled the tests and provided a report thereon to Commission staff.

EXECUTIVE SUMMARY

On June 12, 2000, the Northern Virginia Regional Commission entered into a contract with Fair Housing Management Consultants to provide testing services to Fairfax County. One hundred and one sales tests were conducted in accordance with that contract at real estate offices located in Fairfax County between November 5, 2001, and December 1, 2001.

- 101 Fair Housing Sales Tests
(97 original tests and 4 retests)
 - 36 tests for evidence of discrimination due to race
 - 65 tests for evidence of discrimination due to national origin: 26 tests national origin Arab
39 tests national origin Hispanic
- 97 original tests were conducted
 - 93 tests showed no evidence of discrimination
 - 3 tests showed evidence of a difference in treatment that gave rise to the possibility of discrimination
 - 1 test showed evidence of discrimination
- 4 retests were conducted
 - 3 tests showed no evidence of discrimination
 - 1 test showed evidence of discrimination
- 1 complaint was filed (national origin Hispanic)

BACKGROUND

On April 28, 1997, the Fairfax County Board of Supervisors appropriated funds for a fair housing testing program. On June 23, 1997, the Fairfax County Board of Supervisors adopted an Analysis of Impediments to Fair Housing Choice in Fairfax County. The Board of Supervisors decided that the Fairfax County Human Rights Commission should take primary responsibility for addressing the identified impediments including: lack of availability of discrimination data, need for education and outreach, and lack of housing opportunities for families with children and persons with disabilities.

The Northern Virginia Planning District Commission then certified three fair housing testing contractors. In 1998-1999, 157 fair housing rental tests were conducted on the basis of race, national origin, disability, and familial status (presence of children in household).

In August 1998, the Human Rights Commission formed a Fair Housing Task Force composed of stakeholders from the housing industry, community associations, public officials, and nonprofit groups. Members included the Northern Virginia Association of Realtors, the Northern Virginia Apartment Association, Fairfax Area Disability Services Board, Office of Housing and Community Development, Community Association Institute, The Fair Housing Center of Northern Virginia, the Community Services Board, Kurdish Human Rights Watch, Pathway Homes, Center for Housing Counseling, Center for Multicultural Human Services, Northern Virginia Family Services, Legal Services of Northern Virginia, and interested citizens. This Task Force

recommends that Fairfax County conduct fair housing testing on an ongoing basis.

The Human Rights Commission published its first Rental Testing Report on July 26, 1999. This study represented the first countywide testing study undertaken by Fairfax County. Following the first round of rental tests, the Human Rights Commission took the following action:

- (1) filed Human Rights Commission charges where testing evidence showed a need for enforcement action;
- (2) expanded education and outreach activities to rental complexes, especially for front line personnel; and
- (3) retested 125 rental complexes to measure the results of enforcement and educational actions.

Complexes were chosen to maximize the coverage of the rental market in Fairfax County both in terms of complexes and management companies. Complexes with fewer than 25 units were not tested due to a low probability of vacancies. The Commission's objective was to cover as many units as possible within budget restrictions.

In the first round of rental tests, 1999 report, a total of 157 complexes were tested for compliance with fair housing laws. This represents approximately 82% of the apartment complexes with more than 25 units in Fairfax County. These complexes control over 90% of rental complex housing units in Fairfax County.

In the second round of rental testing, 2001 report, a total of 125 tests were conducted. The County chose to retest the

apartment complexes previously tested in its 1999 fair housing testing study using the same protected classes. In this round of testing, 50 tests were conducted on the basis of race, 44 tests were conducted on the basis of national origin, 24 tests were conducted on the basis of familial status, and 7 tests were conducted on the basis of disability. The *Fairfax County 2000 Rental Housing Complex Census Analysis* reports a total of 56,876 rental complex housing units in Fairfax County. The complexes tested control 40,671 units or 71.5% of rental complex units in Fairfax County. Subsequent to the second round of rental tests, the Human Rights Commission took the following action:

- (1) filed Human Rights Commission charges where testing evidence showed a need for enforcement action.
- (2) expanded education and outreach activities to rental complexes, especially for front line personnel.

After the 1999 round of fair housing rental testing, the Human Rights Commission filed 40 fair housing complaints and provided fair housing training to over 500 persons. The 2001 round of fair housing rental testing showed a marked drop in test results showing evidence of discrimination or possible evidence of discrimination, resulting in the filing of 17 complaints.

FEDERAL, STATE, AND COUNTY FAIR HOUSING LAWS

The federal Fair Housing Act prohibits discrimination in renting, selling, or financing a home based on race, color, religion, national origin, and sex. Congress amended the

federal law in 1988 to include familial status and handicap as protected classes. The United States Department of Housing and Urban Development ("HUD") has determined that the Virginia Fair Housing Law is substantially equivalent to the federal law. On October 16, 2000, the Board of Supervisors amended the Fairfax County Human Rights Ordinance ("Ordinance") to make the fair housing provisions identical to those in the Virginia Fair Housing Act. Subsequently, the Ordinance was submitted to HUD with a request that it be deemed substantially equivalent to the Federal Fair Housing Act. At this time the matter is under consideration by HUD.

Both the Fairfax County Human Rights Ordinance and the Virginia Fair Housing Law prohibit discrimination in housing transactions and services on the same basis covered by the federal law. Both the state and county law also include elderliness (age 55 and over) as a protected basis. In addition, Fairfax County law prohibits discrimination on the basis of marital status.

THEORIES OF HOUSING DISCRIMINATION

The courts have established two ways of proving housing discrimination. Discriminatory housing practices are defined below.

Disparate (Unequal) Treatment - Evidence of disparate treatment occurs when a housing provider treats home seekers differently, for example, on the basis of their race. Fair housing testing is designed to uncover disparate treatment. This is the most common evidence uncovered by fair housing testing.

Adverse Impact - Evidence of adverse impact occurs when housing providers have policies, practices or procedures that, for example, disproportionately limit the ability of protected class members to obtain housing. If the effect of such a policy, practice or procedure adversely impacts members of a protected class, it would violate the fair housing laws.

FAIR HOUSING TESTING METHODOLOGY

The legal authority for a local government's role in challenging discriminatory housing practices was established by the United States Supreme Court's decision in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). This decision affirmed that a local government had standing to challenge racially discriminatory housing practices under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act. Tester corroboration has become an accepted investigative tool used by administrative agencies at all levels to enforce fair housing laws. In 1982, the United States Supreme Court stated that, under certain circumstances, testers have the right to sue under the federal Fair Housing Act. *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

Testing is a method to determine whether or not a home seeker is treated differently in his or her search for housing. A person's race or national origin, for example, would be impermissible factors upon which to base a denial of an opportunity to purchase a home. Testers in housing discrimination cases have been defined as "individuals who, without an intent to rent or purchase a home or apartment,

pose as renters or purchasers for the purpose of collecting evidence of unlawful discriminatory housing practices.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). The experience of testers are used to compare the treatment of one home seeker (protected class) to another (non-protected class). In this context, testing measures the difference in treatment afforded a home seeker as determined by the information and services provided by real estate firms, property management firms, realtors, rental agents and others.

The sales testing in Fairfax County was conducted on the basis of race (Black) and national origin (Hispanic and Arab). A total of one hundred and one tests were conducted in Fairfax County at real estate offices. Four of these one hundred and one tests were re-tests at real estate offices where differences in treatment were found in the initial test. Thirty-six tests were conducted on the basis of race. Sixty-five tests were conducted on the basis of national origin (39 Hispanic paired tests and 26 Arab paired tests).

Site Selection

Sites were identified for testing by random selection from a listing of real estate offices and brokers located in Fairfax County in an Internet yellow pages directory of "real estate agents and companies, real estate consultants." An effort was made to test both large and small real estate offices. Many of the small offices are one or two person offices, often with a husband/wife staff. Scheduling the tests became a challenge at the small offices because both members of the tester team attempted to make an appointment with a real estate agent, preferably the same agent, on the same day. It was found that the testers could

not visit the small offices on a walk-in basis because of the probability that either the office would be closed or the agents would be out of the office.

Testing Site and Characteristics Assignments

As previously discussed, the purpose of this round of sales testing in the Fairfax County was to determine how the testers in the protected classes, race (Black) and national origin (Hispanic and Arab), were treated at real estate offices located in the County. This is accomplished by pairing two testers who are matched as equally as possible to each other except for the material factors of race and national origin. It is important to minimize, as much as possible, variables that are extraneous to what is being tested (differences in treatment based on race and national origin). The characteristics that relate to the home purchase qualification process were matched as closely as practicable for each tester. This included matching, for example, the income, education, employment background, outstanding indebtedness, and the prior housing history of the testers. Personal characteristics such as marital status and number of children were also matched. In order to conduct a race sales test, for example, a Black married couple with two children was matched with a White married couple who had two children. Generally, it is necessary for testers to assume characteristics other than their own. Testers are, in fact, playing a role during the test.

All testers involved in the national origin tests (Hispanic and Arab testers) had accents.

The testers were generally sent to the same real estate office on the same day, usually 1 to 2 hours apart.

Generally, the tests were scheduled so the protected class tester visited the real estate office first, followed by their teammate. The tester teams were assigned to express interest in purchasing the same type of house. The tester teams were also instructed to indicate similar dates that they wished to purchase a home.

Tester Training

All testers were required to attend training. Training sessions were held November 3, 2001, and November 17, 2001. Pretest training serves to enhance the credibility of the testing process and diminish the likelihood of deviation from controlled factors. Testers are oriented as to what is expected of them when conducting a test. Tester training included instruction in the following areas:

- (a) brief discussion of federal, state, and local fair housing laws;
- (b) what testing is;
- (c) playing the role of a tester;
- (d) conducting the test; and
- (e) the debriefing process.

These, of course, were not the only components of the training, but were critical to the process of preparing the testers. The training provided an opportunity to thoroughly familiarize the testers with all of the testing forms, and also emphasized the importance of timeliness in the completion of the forms to insure the validity of the testing process.

Generally, the testers were debriefed each day after completing their assigned tests. The debriefing interview is a mechanism that ensures that the testing experience is

being reported accurately and objectively. During the debriefing interview the Tester Report Form was carefully reviewed with each tester. Particular attention was given to the narrative portion of the form. The testers made any corrections and additions to the report form during the debriefing session. Each member of the tester team was debriefed separately. Debriefing each tester separately maintains the confidentiality and objectivity of the testing results.

ANALYSIS OF TEST RESULTS

Each test was analyzed individually to ascertain if there were any differences in treatment accorded, for example, to the Black and White members of the tester team. Rather than categorizing one aspect of the test as showing a difference in treatment, the tests were analyzed as a whole to put the totality of treatment afforded to each tester in context.

Because the sales tests did not include having the testers enter into a contract to purchase a home and participate in the subsequent home mortgage qualifying process at any of the real estate offices tested, the tests could only measure one aspect of housing discrimination. The one aspect measured was the treatment of testers at the stage of initial inquiry of an agent or broker regarding the purchase of a home within a specific price range and dates of availability. The comparative treatment of the testers by the agent or broker with regard to setting an appointment, meeting with the tester, provision of literature and listings, referral for financing, extension of special offers, and information sought or required from the testers were among the behaviors examined in the study.

REVIEW OF THE TEST RESULTS

A review of the 101 tests completed showed that there were differences in treatment in 3 of the tests based on national origin (Hispanic), and 1 of the tests based on race (Black). There were no differences in treatment found in the national origin tests involving Arab testers. Each of the four sites where a difference in treatment occurred was retested. Three of the four retests reflected no difference in treatment of the protected basis tester and the control tester by the agent or broker. In one instance the difference in treatment of the testers was confirmed; that scenario is set forth below.

Test #27

This site was tested based on national origin (Hispanic/non-Hispanic U.S. born tester team). Both testers indicated that they were interested in purchasing a three-bedroom single family home in Fairfax County. Both testers posed as being married with two children. Both testers spoke to the same principal broker of the office. Neither tester called the office prior to the test to make an appointment. The broker gave both testers computer listings of available houses. Both testers were also asked to sign Buyer Representation Agreements. Both testers indicated that they would have to discuss the agreement with their "husbands" before signing it.

The non-Hispanic tester visited the real estate office shortly after the Hispanic tester. The broker told the non-Hispanic tester that he'd contribute \$1,000 toward her closing costs as an inducement to enter into an agreement of exclusive representation. The broker told the non-Hispanic tester that

he had the authority to make this offer because he owned the company. The broker wrote \$1,000 on the back of his business card and told the tester that only they would know what that means. The broker did not make the same offer to the Hispanic tester.

This was re-tested because the broker made an offer to contribute \$1,000 toward closing costs for the non-Hispanic tester and did not make the same offer to the Hispanic tester.

Re-test of Test #27

The re-test was conducted on the basis of national origin. Both testers made an appointment with the same broker involved in the initial test. Both testers indicated that they were looking for the same type of housing. The non-Hispanic tester met with the broker the day after the Hispanic tester visited the office as instructed.

The broker gave both testers computer listings. The Hispanic tester was given information about schools, including SAT scores, in Fairfax County. The non-Hispanic tester was given a sample form letter stating that the real estate office would contribute \$1,000 toward closing costs. The Hispanic tester did not get this form letter nor did the broker discuss this offer with the tester.

The re-test reaffirmed a difference in treatment based on national origin. The Hispanic tester was not offered \$1,000 toward closing costs.

CONCLUSION AND RECOMMENDATIONS

Although it is difficult to generalize from the results of the testing sample in this study, the testing results appear to show that the level of discrimination in the sale of residential housing in Fairfax County is not as great as previous studies in Northern Virginia have purported to show. These results of the housing sales testing study are consistent with the results of studies recently undertaken in other jurisdictions in the area.

The testing experiences generally reflect a remarkably consistent pattern of fair housing compliance in the area of the market tested - residential home sales. The reasons for this are varied. First, all realtors in Virginia are required to undertake fair housing training as a licensing maintenance requirement. Second, the Human Rights Commission has developed a comprehensive fair housing testing and training program geared toward the housing industry. These have resulted in a heightened awareness of fair housing laws and the responsibilities for compliance therewith on the part of housing providers in Fairfax County.

A review of this study in conjunction with results of the prior rounds of testing of the rental community indicate that the level of fair housing education received by housing providers has a direct impact on the treatment received by those seeking to rent or purchase homes in Fairfax County. This indicates that continued education and outreach efforts by the Commission are critical to ensuring that equal housing opportunity is a reality in Fairfax County.

Where merited by the facts, the Commission will continue to file complaints to enforce the fair housing laws of Fairfax

County. Whether a large or small number of discriminatory practices are uncovered by the testing, the goal is to eliminate housing bias throughout the county. Towards that end, it is imperative that the Commission continue its testing program in order to monitor compliance with the fair housing laws.

Michael T. Cash
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